IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 253 OF 2002.

Pandurang Narvekar,
resident of House No.184,
Maimolem, Vasco-da-Gama, Goa. ... Petitioner.

VERSUS

1. Labour Commissioner,
   Government of Goa,
   Junta House, 1st Floor,
   Panjim, Goa.

2. Collector of South Goa,
   Margao, Goa.

3. Mamlatdar of Mormugao,
   Vasco-da-Gama, Goa. ... Respondents.

Mr. V. Menezes, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. N.K. Sawaikar, Addl. Government Advocate for the State/Respondent.

CORAM: P. V. KAKADE &
P. V. HARDAS, JJ.

DATE: 21ST OCTOBER, 2002.

ORAL JUDGMENT: **(PER KAKADE, J.)**

Rule. Rule made returnable immediately with the consent of the parties.

2. Heard the learned counsel for both the sides.

3. The petitioner has prayed for a writ of mandamus or any other appropriate writ or directions to the respondents to recover the amount due to the

petitioner from the employer who is not a party to the petition.

By an Award dated 10.1.1997 the Industrial Tribunal, Goa held that the action of the management of M/s. Gomantak Flour Mill, Vasco-da-Gama, employer of the petitioner in case of terminating the petitioner's services was illegal and unjustified. The present petitioner was directed to be reinstated with full back wages and all other consequential benefits. The petitioner made an application under Section 33C(i) of the Industrial Disputes Act to the Labour Commissioner wherein it was stated that he was entitled to receive from his employer a sum of Rs.45,000/- alongwith interest thereon on account of the Award passed by the Industrial Tribunal by Award dated 10.1.1997.

However, inspite of the order passed by the Industrial Tribunal, it is alleged by the petitioner that the respondents have not taken any steps to recover the amount from the employer and hence the petition.

4. In the affidavit-in-reply filed by the respondent No.3 it is mentioned that the only known property of the said Shankar Krishna Dicholkar to the knowledge of the respondent is the residential flat at Vasco which is jointly in the name of Shankar and his

wife and their share is undivided. Therefore the respondent has expressly stated his inability to effect partition of the undivided share in the said flat.

5. Taking into account the relevant aspects, we agree with the respondent when he expressed his inability to enforce the Award for recovery of the amount by sale of the said property which is the only known asset.

It is also informed by the wife of Shankar that her husband is missing and the Police have certified the fact that he is missing since October, 1998.

6. In view of this situation, this petition has to be disposed of with directions to the respondents to make every effort to recover the said amount from the employer and no directions can be issued with regard to the only known asset which is a dwelling house especially when the concerned lady is not a party to the petition. It is made clear that the observations made in the said Order may not deter the competent authority to create charge over the property if so required in law.

7. In view of this situation, the respondents are directed to make every effort to recover the

impugned amount for payment to the petitioner. With these directions, the petition stands disposed of.

P. V. KAKADE, J.

P. V. HARDAS, J.

sl.